

# Internal Revenue bulletin

Bulletin No. 1998-35  
August 31, 1998

## HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

### INCOME TAX

Rev. Rul. 98-41, page 6.

Employees' trust's unrelated business taxable income. An employees' trust's proportionate share of the income of a common trust fund is unrelated business taxable income (UBTI) to the extent that it would have been if the investment producing the income had been made directly by the employees' trust. Rev. Rul. 67-301 modified.

Rev. Rul. 98-42, page 5.

LIFO; price indexes; department stores. The June 1998 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, June 30, 1998.

### ADMINISTRATIVE

REG-209813-96, page 9.

Proposed regulations under section 671 of the Code define widely held fixed investment trusts, clarify the reporting obligations of the trustees of these trusts and the middlemen connected with these trusts, and provide for the communication of

necessary tax information to beneficial owners of trust interests. A public hearing on the proposed regulations will be held on November 5, 1998.

Notice 98-40, page 7.

Consolidated income tax returns. Treasury and the Service intend to issue regulations under section 1502 of the Code permitting taxpayers to elect not to apply the overall foreign loss provisions under section 1.1502-9T of the Income Tax Regulations to consolidated return years beginning before January 1, 1998. The notice also provides guidance on how taxpayers can make the election.

Notice 98-45, page 7.

Definition of former Indian reservation in Oklahoma. This notice provides the definition of "former Indian reservations in Oklahoma" for purposes of section 168(j)(6) of the Code, as amended by the Taxpayer Relief Act of 1997.

Announcement 98-82, page 17.

This document provides notice of a public hearing on proposed regulations, REG-251698-96, 1998-20 I.R.B. 14, under section 1308 of the Code relating to the treatment of corporate subsidiaries of S corporations. The hearing will be held on September 9, 1998.

Finding Lists begin on page 19.

Announcements Relating to Court Decisions begin on page 4.



Department of the Treasury  
Internal Revenue Service

# Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our prod-

ucts and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency, and fairness.

## Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

# Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and proce-

dures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

## Part I.—1986 Code.

This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

## Part II.—Treaties and Tax Legislation.

This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

## Part III.—Administrative, Procedural, and Miscellaneous.

To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

## Part IV.—Items of General Interest.

With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a semiannual basis and are published in the first Bulletin of the succeeding semiannual period, respectively.

The contents of this publication are not copyrighted and may be reprinted freely. A citation of the Internal Revenue Bulletin as the source would be appropriate.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

# Announcement Relating to Court Decisions

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in

certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both “acquiescence” and “acquiescence in result only” mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, “acquiescence” indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, “acquiescence in result only” indicates disagreement or concern with some or all of those reasons. Nonacquiescence signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally,

will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a nonacquiescence indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The announcements published in the weekly Internal Revenue Bulletins are consolidated semiannually and annually. The semiannual consolidation appears in the first Bulletin for July and in the Cumulative Bulletin for the first half of the year, and the annual consolidation appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner ACQUIESCES in the following decision:

**McCormick v. Peterson,**<sup>1</sup>  
CV93-2157 (E.D.N.Y. 1993),

**Estate of Clara K. Hoover, Deceased, Yetta Hoover Bidegain, Personal Representative v. Commissioner,**<sup>2</sup>  
69 F.3d 1044 (10th Cir. 1995)

**Barry I. Fredericks v. Commissioner,**<sup>3</sup>  
No. 96-7748 (3rd Cir. 1997)

<sup>1</sup>Acquiescence relating to whether the taxpayer was subject to the frivolous return penalty under section 6702.

<sup>2</sup>Acquiescence relating to whether the election of special use valuation under I.R.C. section 2032A precludes a valuation that takes into account a minority interest discount under section 2031.

<sup>3</sup>Acquiescence relating to whether the Court of Appeals erred in determining that the Service is equitably estopped from relying on a Form 872-A to indefinitely extend the period of limitations when the Service's actions misled the taxpayer into believing that the form was not in effect.

# Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

## Section 472.—Last-in, First-out Inventories

26 CFR 1.472-1: Last-in, first-out inventories.

**LIFO; price indexes; department stores.** The June 1998 Bureau of Labor Statistics price indexes are accepted for use by department stores employing the retail inventory and last-in, first-out inventory methods for valuing inventories for tax years ended on, or with reference to, June 30, 1998.

## Rev. Rul. 98-42

The following Department Store Inventory Price Indexes for June 1998 were issued by the Bureau of Labor Statistics. The indexes are accepted by the Internal Revenue Service, under § 1.472-1(k) of the Income Tax Regulations and Rev. Proc. 86-46, 1986-2 C.B. 739, for appropriate application to inventories of department stores employing the retail inventory and last-in, first-out inventory methods for tax years ended on, or with

reference to, June 30, 1998.

The Department Store Inventory Price Indexes are prepared on a national basis and include (a) 23 major groups of departments, (b) three special combinations of the major groups - soft goods, durable goods, and miscellaneous goods, and (c) a store total, which covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

### BUREAU OF LABOR STATISTICS, DEPARTMENT STORE INVENTORY PRICE INDEXES BY DEPARTMENT GROUPS

(January 1941 = 100, unless otherwise noted)

Groups	June 1997	June 1998	Percent Change from June 1997 to June 1998 <sup>1</sup>
1. Piece Goods .....	541.0	513.9	-5.0
2. Domestics and Draperies .....	644.1	618.6	-4.0
3. Women's and Children's Shoes .....	651.0	659.3	1.3
4. Men's Shoes .....	904.0	906.7	0.3
5. Infants' Wear .....	642.5	623.1	-3.0
6. Women's Underwear .....	539.3	567.7	5.3
7. Women's Hosiery .....	295.7	308.3	4.3
8. Women's and Girls' Accessories .....	569.4	536.2	-5.8
9. Women's Outerwear and Girls' Wear .....	415.3	410.0	-1.3
10. Men's Clothing .....	625.0	616.6	-1.3
11. Men's Furnishings .....	589.8	599.1	1.6
12. Boys' Clothing and Furnishings .....	494.5	494.6	0.0
13. Jewelry .....	1002.1	970.3	-3.2
14. Notions .....	752.1	776.0	3.2
15. Toilet Articles and Drugs .....	913.5	948.5	3.8
16. Furniture and Bedding .....	673.2	689.3	2.4
17. Floor Coverings .....	592.4	604.0	2.0
18. Housewares .....	808.1	818.6	1.3
19. Major Appliances .....	243.5	236.7	-2.8
20. Radio and Television .....	76.2	71.9	-5.6
21. Recreation and Education <sup>2</sup> .....	109.5	104.8	-4.3
22. Home Improvements <sup>2</sup> .....	132.8	133.1	0.2
23. Auto Accessories <sup>2</sup> .....	108.0	107.2	-0.7
Groups 1 - 15: Soft Goods .....	602.5	600.1	-0.4
Groups 16 - 20: Durable Goods .....	465.9	463.6	-0.5
Groups 21 - 23: Misc. Goods <sup>2</sup> .....	112.2	108.9	-2.9
Store Total <sup>3</sup> .....	554.8	550.7	-0.7

<sup>1</sup>Absence of a minus sign before percentage change in this column signifies price increase.

<sup>2</sup>Indexes on a January 1986=100 base.

<sup>3</sup>The store total index covers all departments, including some not listed separately, except for the following: candy, food, liquor, tobacco, and contract departments.

## DRAFTING INFORMATION

The principal author of this revenue ruling is Stan Michaels of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding this revenue ruling, contact Mr. Michaels on (202) 622-4970 (not a toll-free call).

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### Section 584.—Common Trust Funds

*26 CFR 1.584-2: Income of participants in common trust fund.*

**Employees' trust's unrelated business taxable income.** An employees' trust's proportionate share of the income of a common trust fund is unrelated business taxable income (UBTI) to the extent that it would have been if the investment producing the income had been made directly by the employees' trust. Rev. Rul. 67-301 modified.

## Rev. Rul. 98-41

In Rev. Rul. 67-301, 1967-2 C.B. 146, an employees' trust, formed under § 401(a) of the Internal Revenue Code and exempt under § 501(a), invested in a common trust fund that is exempt under § 584. Rev. Rul. 67-301 concludes, in part, that the income of the common trust fund is not unrelated business taxable income (UBTI) in the hands of the employees' trust.

Section 1.584-2(c)(3) of the Income Tax Regulations provides that for taxable years beginning on or after September 22, 1980, any amount of income or loss of the common trust fund that is included in the computation of a participant's taxable income for the taxable year shall be treated as income or loss from an unrelated trade or business to the extent that the amount would have been income or loss from an unrelated trade or business if the investments of the common trust fund had been made directly by the participant.

The discussion of UBTI in Rev. Rul. 67-301 is inconsistent with § 1.584-2(c)(3). Therefore, Rev. Rul. 67-301 is modified to provide that the employees' trust's proportionate share of the income of the common trust fund is UBTI to the extent that it would have been if the investment producing the income had been made directly by the employees' trust.

## EFFECT ON OTHER REVENUE RULINGS

Rev. Rul. 67-301 is modified, effective for taxable years beginning on or after September 22, 1980.

## DRAFTING INFORMATION

The principal author of this revenue ruling is John Kramer of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue ruling contact John Kramer on (202) 622-3060 (not a toll-free call).



## Part III. Administrative, Procedural, and Miscellaneous

### Effective Date of Consolidated Overall Foreign Loss Provisions

#### Notice 98-40

This notice announces that Treasury and the Service intend to issue regulations permitting taxpayers to elect to delay the effective date of Treas. Reg. § 1.1502-9T, published in the **Federal Register** on January 12, 1998 (63 F.R. 1740), and modified on March 16, 1998 (63 F.R. 12641).

On January 12, 1998, Treasury and the Service published in the **Federal Register** final, temporary and proposed regulations (the "January 1998 regulations") relating to limitations on the use of certain tax credits and related attributes by corporations filing consolidated income tax returns. In general, the January 1998 regulations relate to the separate return limitation year ("SRLY") provisions for general business credits, alternative minimum tax credits, foreign tax credits and overall foreign loss accounts. The January 1998 regulations were generally applicable to consolidated return years beginning on or after January 1, 1997.

On March 16, 1998, Treasury and the Service published in the **Federal Register** final, temporary, and proposed regulations (the "March 1998 regulations") modifying the effective date of the January 1998 regulations. The March 1998 regulations provide that the provisions of the January 1998 regulations will apply for consolidated return years for which the due date (without extensions) of the income tax return is after March 13, 1998. In lieu of applying this effective date, however, the March 1998 regulations permit a consolidated group to choose to apply the effective date provisions under the January 1998 regulations. The March 1998 regulations provide that taxpayers making this choice must apply all those effective date provisions for all relevant years. Thus, under the March 1998 regulations, such taxpayers are not permitted to apply one provision of the January 1998 regulations (e.g., the general business credit effective date) and not another (e.g., the foreign tax credit effective date).

On May 7, 1998, a public hearing was held regarding the proposed January and

March regulations. At the hearing and in written submissions, commentators expressed concern regarding the effective dates contained in the January 1998 and March 1998 regulations with respect to the overall foreign loss account provisions of Treas. Reg. § 1.1502-9T. The commentators' principal concern was that these effective dates resulted in adverse tax consequences not anticipated by taxpayers with respect to business transactions that occurred prior to the issuance of the January 1998 regulations. Treasury and the Service now believe that certain of these consequences are inappropriate.

Accordingly, this notice announces that Treasury and the Service intend to issue regulations permitting taxpayers to elect not to apply Treas. Reg. § 1.1502-9T (the overall foreign loss account provisions) to consolidated return years beginning before January 1, 1998. A taxpayer that chooses under the March 1998 regulations to apply the effective date provisions under the January 1998 regulations may also make the election under this notice.

To make the election under this notice, a taxpayer must write "Election Pursuant to Notice 98-40" across the top of page 1 of an original or amended tax return for each consolidated return year subject to the election. For the first consolidated return year to which the overall foreign loss provisions of Treas. Reg. § 1.1502-9T apply (i.e., the first year beginning on or after January 1, 1998), such taxpayer must write "Notice 98-40 Election in Effect in Prior Years" across the top of page 1 of the consolidated tax return for that year. For purposes of applying Treas. Reg. § 1.1502-9T with respect to such year, any member with a balance in an overall foreign loss account from a separate return limitation year on the first day of such year shall be treated as joining the group on such first day.

Treasury and the Service intend to amend the regulations under section 1502 to incorporate the guidance set forth in this notice. Until the regulations are amended, taxpayers may rely on the guidance set forth in this notice.

For further information regarding this notice, contact Trina Dang of the Office of Associate Chief Counsel (Interna-

tional) at (202) 622-3880 (not a toll-free call).

### Former Indian Reservations in Oklahoma

#### Notice 98-45

This notice defines "former Indian reservations in Oklahoma" for purposes of § 168(j)(6) of the Internal Revenue Code, as amended by the Taxpayer Relief Act of 1997 (the Act), Pub. L. No. 105-34, 111 Stat. 788.

#### BACKGROUND

Sections 13321 and 13322 of the Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 1993-3 C.B. 1, 146-151, amended the Internal Revenue Code by adding two provisions to the Code to establish two Indian reservation-based federal tax incentives. Section 45A generally provides an Indian employment credit for certain wages and health insurance costs paid or incurred by an employer whose employees are enrolled members of an Indian tribe or the spouses of enrolled members of an Indian tribe who perform substantially all their services for the taxpayer within an Indian reservation and have a principal place of abode on or near such reservation. Section 168(j) generally provides more favorable depreciation for qualified Indian reservation property (that is, certain depreciable property used predominantly in the active conduct of a trade or business within an Indian reservation and not regularly used or located outside the reservation). Section 45A applies to wages and health insurance costs paid or incurred after December 31, 1993, in a taxable year that begins on or before December 31, 2003. Section 168(j) applies to property placed in service after December 31, 1993, and on or before December 31, 2003.

Section 45A(c)(7) states that the term "Indian reservation" has the meaning given the term by § 168(j)(6). Section 168(j)(6) (prior to its amendment by the Act) provided that, for purposes of § 168(j), the term "Indian reservation"

means a reservation, as defined in either section 3(d) of the Indian Financing Act of 1974, 25 U.S.C. § 1452(d), or section 4(10) of the Indian Child Welfare Act of 1978, 25 U.S.C. § 1903(10). Section 3(d) of the Indian Financing Act of 1974 defines reservation to include “former Indian reservations in Oklahoma.”

Section 1604(c) of the Act (generally effective as of January 1, 1994) amended the definition of “Indian reservation” under section 168(j)(6). Under the amendment, only lands within the jurisdictional area of an Oklahoma Indian tribe (as determined by the Secretary of the Interior) that are recognized by such Secretary as an area eligible for trust land status under 25 CFR Part 151 as in effect on August 5, 1997 (the date of enactment), are “former Indian reservations in Oklahoma.”

#### DETERMINATION OF SECRETARY OF THE INTERIOR AS TO THE MEANING OF FORMER INDIAN RESERVATIONS

The Secretary of the Interior has determined that, for purposes of section 168(j)(6), lands that are within the jurisdictional area of an Oklahoma Indian tribe are those lands within the boundaries of the last treaties, Executive Orders, fed-

eral agreements, federal statutes, and Secretarial Orders with the Oklahoma tribes. The Secretary of the Interior also has determined that any lands within the boundaries of the last treaties, Executive Orders, federal agreements, federal statutes, and Secretarial Orders with the Oklahoma tribes are lands eligible for trust land status under 25 CFR Part 151.

The areas of Oklahoma located outside the boundaries of the last treaties, Executive Orders, federal agreements, federal statutes, and Secretarial Orders with the Oklahoma tribes are (1) the Cherokee Outlet, (2) No Man’s Land (also known as the Panhandle), (3) the historic Greer County, and (4) those former Seminole and Creek domain lands in central Indian Territory that were deemed to be “unassigned lands.” The location of those areas in Oklahoma that are outside the boundaries of the last treaties, Executive Orders, federal agreements, federal statutes, and Secretarial Orders with the Oklahoma Indian tribes can best be described in terms of entire present-day counties that are ineligible (Alfalfa, Beaver, Cimarron, Garfield, Grant, Greer, Harmon, Harper, Jackson, Major, Texas, Woods, and Woodward) and present-day counties that are split by the boundaries, that is, part of the county is eligible and part of the

county is not eligible (Beckham, Canadian, Cleveland, Ellis, Kay, Kingfisher, Logan, Noble, Oklahoma, Pawnee and Payne).

#### ADDITIONAL INFORMATION

The Arkansas-Oklahoma District of the Internal Revenue Service will make available a plain language description of the boundary for each split county. Written requests should include the name of the applicable split county and be sent to the following address: Internal Revenue Service, 55 North Robinson Street, Mail Stop 4030-OKC, Attention: RSC, Oklahoma City, OK 73102. The plain language description is also available on the Internet at <http://www.irs.ustreas.gov/prod/hot/atn/oklahoma.html>.

#### DRAFTING INFORMATION CONTACT

The principal author of this notice is Winston H. Douglas of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice contact Mr. Douglas on (202) 622-3110 (not a toll-free call). For information concerning the boundaries, contact the Arkansas-Oklahoma District office on (405) 297-4690 (not a toll-free call).



## Part IV. Items of General Interest

### Notice of Proposed Rulemaking and Notice of Public Hearing

#### Reporting Requirements for Widely Held Fixed Investment Trusts

REG-209813-96

AGENCY: Internal Revenue Service  
(IRS), Treasury

ACTION: Notice of proposed rulemak-  
ing and notice of public hearing.

SUMMARY: This document contains  
proposed regulations that define widely  
held fixed investment trusts, clarify the  
reporting obligations of the trustees of  
these trusts and the middlemen connected  
with these trusts, and provide for the com-  
munication of necessary tax information  
to beneficial owners of trust interests.  
This document also provides notice of a  
public hearing on these proposed regula-  
tions.

DATES: Written comments must be re-  
ceived by, November 12, 1998. Requests  
to speak (with outlines of oral comments)  
at a public hearing scheduled for Thurs-  
day, November 5, 1998 at 10 a.m. must be  
submitted by October 15, 1998.

ADDRESSES: Send submissions to:  
CC:DOM:CORP:R (REG-209813-96),  
room 5228, Internal Revenue Service,  
POB 7604, Ben Franklin Station, Wash-  
ington, DC 20044. In the alternative, sub-  
missions may be hand delivered between  
the hours of 8 a.m. and 5 p.m. to:  
CC:DOM:CORP:R (REG-209813-96),  
Courier's Desk, Internal Revenue Build-  
ing, 1111 Constitution Avenue, NW,  
Washington, DC. Alternatively, taxpayers  
may submit comments electronically via  
the Internet by selecting the "Tax Regs"  
option on the IRS Home Page, or by sub-  
mitting comments directly to the IRS In-  
ternet site at [http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html). The pub-  
lic hearing will be held in room 2615, In-  
ternal Revenue Building, 1111 Constitu-  
tion Avenue, NW, Washington, DC.

FOR FURTHER INFORMATION CON-  
TACT: Concerning the regulations, Faith

Colson, (202) 622-3060; concerning sub-  
missions and the hearing, LaNita Van  
Dyke, (202) 622-7180 (not toll-free num-  
bers).

#### SUPPLEMENTARY INFORMATION:

##### *Paperwork Reduction Act*

The collection of information contained  
in this notice of proposed rulemaking has  
been submitted to the Office of Manage-  
ment and Budget for review in accor-  
dance with the Paperwork Reduction Act  
of 1995 (44 U.S.C. 3507(d)). Comments  
on the collection of information should be  
sent to the **Office of Management and  
Budget**, Attn: Desk Officer for the De-  
partment of Treasury, Office of Informa-  
tion and Regulatory Affairs, Washington,  
DC 20503, with copies to the **Internal  
Revenue Service**, Attn: IRS Reports  
Clearance Officer, OP:FS:FP, Washing-  
ton, DC 20224. Comments on the collec-  
tion of information should be received by,  
October 13, 1998. Comments are specifi-  
cally requested concerning:

Whether the proposed collection of in-  
formation is necessary for the proper per-  
formance of the functions of the **Internal  
Revenue Service**, including whether the  
information will have practical utility;

The accuracy of the estimated burden  
associated with the proposed collection of  
information (see below);

How the quality, utility, and clarity of  
the information to be collected may be en-  
hanced;

How the burden of complying with the  
proposed collection of information may  
be minimized, including through the ap-  
plication of automated collection tech-  
niques or other forms of information tech-  
nology; and

Estimates of capital or start-up costs  
and costs of operation, maintenance, and  
purchase of service to provide informa-  
tion.

The collection of information in these  
proposed regulations is in §1.671-4 of the  
Income Tax Regulations. This informa-  
tion is required to enable holders of trust  
interests to report items of income, deduc-  
tion, and credit of a widely held fixed in-  
vestment trust under section 671. This in-  
formation will be used by the IRS to en-  
sure that those items are reported accu-

rately by beneficial owners of trust inter-  
ests. The collection of information is  
mandatory. The likely respondents are  
businesses and other for-profit institu-  
tions.

Estimated total annual reporting bur-  
den: 2,400 hours.

Estimated average annual burden hours  
per respondent: 2 hours.

Estimated number of respondents:  
1,200.

Estimated annual frequency of re-  
sponses: Annually (but more often for a  
trust providing information to certain per-  
sons on request).

An agency may not conduct or sponsor,  
and a person is not required to respond to,  
a collection of information unless it dis-  
plays a valid control number assigned by  
the Office of Management and Budget.

Books or records relating to the collec-  
tion of information must be retained as  
long as their contents may become mater-  
ial in the administration of any internal  
revenue law. Generally, tax returns and  
tax return information are confidential, as  
required by 26 U.S.C. 6103.

##### *Background*

This document contains proposed  
amendments to the Income Tax Regula-  
tions (26 CFR part 1) under section 671.  
The proposed amendments are to be is-  
sued under the authority of sections 671,  
6034A, 6049(d)(7), and 7805.

A fixed investment trust is an arrange-  
ment classified as a trust under  
§301.7701-4(c). Beneficial interests in  
these trusts are divided into units. The  
Service treats these trusts as grantor trusts  
under section 671 and the owners of the  
beneficial interests, or units, as the  
grantors. See Rev. Rul. 84-10 (1984-1  
C.B. 155); Rev. Rul. 70-545 (1970-2  
C.B. 7); Rev. Rul. 70-544 (1970-2 C.B.  
6); Rev. Rul. 61-175 (1961-2 C.B. 128).  
Under the proposed regulations, a *widely  
held fixed investment trust* is a fixed in-  
vestment trust in which any interest is  
held by a middleman. For this purpose,  
the term *middleman* includes, but is not  
limited to, a custodian of a person's ac-  
count, a nominee, and a broker holding an  
interest for a customer in street name.  
The IRS and Treasury request comments  
on the application and scope of these defi-

nitions, including the appropriateness of a de minimis rule as to the number of middlemen.

Interests in widely held fixed investment trusts are often held in the street name of a middleman, who holds such interests on behalf of the beneficial owners. Thus, trustees frequently do not know the identity of the beneficial owners and are not in a position to communicate necessary tax information directly to such owners. Currently, there are no tax information reporting rules specifically providing for the sharing of tax information among trustees, middlemen, and beneficial owners of these trusts.

On December 21, 1995, final regulations (T.D. 8633) under section 671, relating to the information reporting requirements of grantor trusts, were published in 1996-1 C.B. 119. See §1.671-4. While drafting the final regulations, the IRS and Treasury concluded that special reporting requirements were needed for widely held fixed investment trusts but that such guidance fell outside the scope of the final regulations. The preamble to the final regulations stated that the IRS and Treasury anticipated providing guidance for these trusts in a separate project and invited comments from interested taxpayers and practitioners regarding such guidance.

In developing these proposed regulations, the IRS and Treasury have continued to solicit comments from the public. Comments were received from various industry members and practitioners, and these proposed regulations take such comments into account. The proposed regulations are intended to clarify the reporting requirements of trustees and middlemen and to ensure that beneficial owners of trust interests receive accurate and timely tax reporting information. The IRS and Treasury welcome comments on specific instances of industry practice that differ significantly from the framework of these proposed regulations and on suggestions to tailor the reporting requirements to account for those differences.

#### *Explanation of Provisions*

##### *A. General Framework of Reporting Rules*

The information reporting framework in the proposed regulations is similar to that for regular interests in a real estate

mortgage investment conduit. See §1.6049-7.

Under the proposed regulations, the responsibility for information reporting lies primarily with the person in the ownership chain who holds a unit interest for a beneficial owner and is, therefore, in the best position to communicate with, and provide tax information to, the beneficial owner. Thus, a brokerage firm that holds a unit interest directly for an individual as a middleman will have the primary obligation to report to the IRS and to provide tax information to the individual. Similarly, if a unit interest is held directly by an individual and not through a middleman, the trustee is to report to the IRS and to provide tax information to the individual. Information reporting generally is not required for interests held by *exempt recipients*. Middlemen and trustees, however, are to make trust tax information available upon request to exempt recipients.

Appropriate adjustments may be necessary to other information reporting rules to make them compatible with these proposed regulations.

##### *B. Trustee or Middleman to Report to the IRS on Form 1099*

Under proposed §1.671-4(j)(2)(i)(A), a trustee must report to the IRS, on the appropriate Forms 1099, the gross amount of trust income (determined in accordance with proposed §1.671-4(j)(6)(i)) attributable to a unit interest holder who holds an interest in the trust directly and not through a middleman. Similarly, under proposed §1.671-4(j)(2)(i)(B), a middleman must report for any unit interest holder on whose behalf or account the middleman holds an interest. (To comply with this requirement, middlemen may request the necessary tax information from the trustee. See the discussion below.) In addition, the trustee or middleman is to report on the appropriate Form 1099 the gross proceeds from the sale or other disposition of a trust asset that is attributable to the unit interest holder. Forms 1099 are not required for any unit interest holder who is an *exempt recipient*, as defined in proposed §1.671-4(j)(1).

##### *C. Statements to be Furnished to the Beneficial Owners of Unit Interests*

Every middleman or trustee required to

file with the IRS a Form 1099 under these proposed regulations for a unit interest holder must furnish to the unit interest holder a written statement providing the holder with necessary tax reporting information including: (1) the items of income (determined in accordance with proposed §1.671-4(j)(6)(i)), deduction, and credit of the trust attributable to the unit interest holder; (2) if any trust asset has been sold or otherwise disposed of during the calendar year, the portion of the gross proceeds relating to the trust asset which is attributable to the unit interest holder, the date of sale or disposition of the trust asset, and the percentage of that trust asset that has been sold or disposed of; and (3) any other information necessary for the unit interest holder to accurately report the income, deductions, and credits of the trust attributable to the unit interest as required under section 671.

In addition, to enable unit interest holders to calculate gain or loss on the disposition of a trust asset, if a trust sells or disposes of a trust asset during a particular calendar year, the proposed regulations require the trustee or middleman to include, with the statement to the holder, a schedule showing the portion (expressed as a percentage) of the total fair market value of all the assets held by the trust that the trust asset sold or disposed of represented as of the last day of each quarter that the asset was held by the trust. It is contemplated that, in the absence of more accurate information, this information may be used by the unit interest holder to determine the percentage of the holder's basis in its unit interest that the disposed asset represents, so that the holder may calculate its gain or loss on the disposition of the asset.

The IRS and Treasury welcome comments on whether the approach taken in the proposed regulations to communicate information to enable the holder of a unit interest to calculate its basis in a trust asset is effective, or whether a different approach, which continues to be consistent with the taxation of grantor trusts, would be more effective. In addition, the IRS and Treasury invite comments on whether, for trusts consisting of fungible assets, an approach other than the proposed asset-by-asset approach for reporting sales and determining basis is administratively feasible or whether an

aggregate approach would be more appropriate and on the manner in which such an aggregate approach would be applied.

#### *D. Information to be Furnished to Middlemen by Trusts*

In general, information reporting is not required for unit interests held by *exempt recipients*. To enable such persons to receive necessary trust information, however, §1.671-4(j)(3)(iii) of the proposed regulations provides that middlemen, exempt recipients, and certain other persons may request from the trust tax information for a calendar quarter, computed as of the last day of the quarter specified, or for a calendar year, computed as of December 31 of the year specified. The tax reporting information the trust is to make available includes: (1) all items of income (determined in accordance with proposed §1.671-4(j)(6)(i)), deduction, and credit of the trust for the period specified; (2) if any trust asset has been sold or otherwise disposed of during the period specified, the gross proceeds received by the trust for the trust asset, the date of sale or disposition, and the percentage of that trust asset that has been sold or disposed of; (3) the number of units outstanding on the last business day of the period specified; and (4) any other information necessary for the unit interest holder to accurately report the income, deductions, and credits attributable to the portion of the trust treated as owned by the holder, as required under section 671. In addition, if a trust asset is sold or otherwise disposed of during the period specified, the trust must provide a schedule showing the portion (expressed in terms of a percentage) of the total fair market value of all the assets held by the trust that the asset sold or disposed of represented as of the last day of each calendar quarter that the trust held the asset.

#### *E. Special Rules*

A beneficial owner of a unit interest must report trust items consistent with the owner's method of accounting. See, e.g., Rev. Rul. 84-10. For administrative convenience, and with the intent of being consistent with industry practice, however, the proposed regulations require a trust to provide tax information as if the trust were a taxpayer using the cash re-

ceipts and disbursements method of tax accounting (cash method). Although a trust must provide tax information to unit holders as if the trust were a cash method taxpayer, the trust must provide information necessary for such holders to comply with the original issue discount rules and other provisions requiring the inclusion of accrued amounts regardless of the holder's method of accounting. The IRS and Treasury are continuing to study, and welcome comments on, whether to require trusts to provide tax reporting information to accommodate the different methods of accounting used by the beneficial owners of a trust.

In the case of a widely held fixed investment trust that holds a pool of debt instruments subject to section 1272(a)-(6)(C)(iii), the proposed regulations require that middlemen, unit interest holders, exempt recipients, and noncalendar-year taxpayers be provided with certain additional information that is necessary for compliance with the market discount rules and, where applicable, section 1272(a)(6) (as amended by section 1004 of the Taxpayer Relief Act of 1997, Public Law 105-34, 111 Stat. 788, 911 (1997)). This additional information includes information necessary to compute (1) the accrual of market discount, including the type of information required under §1.6049-7(f)(2)(i)(G) in the case of a REMIC regular interest or a collateralized debt obligation not issued with original issue discount; and (2) the accrual of original issue discount and market discount, including the type of information required under §1.6049-7(f)(2)(ii)(E), (F), (I), and (K) in the case of a REMIC regular interest or a collateralized debt obligation that is issued with original issue discount. The IRS and Treasury request comments on whether similar information reporting requirements, for example, reporting of information necessary to compute the accrual of market discount, should be extended to widely held fixed investment trusts that hold instruments (or pools of instruments) not subject to section 1272(a)(6)(C).

To enable a beneficial owner to comply fully with section 671 and section 67 (where applicable), §1.671-4(j)(6)(i) of the proposed regulations requires the amount of trust income to be reported by the trustee to be the gross amount of in-

come generated by the trust assets (other than from the sale or other disposition of trust assets). Thus, in the case of a trust that receives a payment net of an expense, the payment must be grossed up to reflect the deducted expense. Trustees must also have, and make available, information regarding the trust's affected expenses (as defined in §1.67-2T(i)(1)) for the calendar year. In addition, in the case of a unit interest holder that is an affected investor (as defined in §1.67-2T(h)(1)), the trustee or middleman must provide such unit interest holder with information regarding the holder's proportionate share of the trust's affected expenses for the calendar year.

The proposed regulations also require the trust to separately state any other item that, if taken into account separately by any unit interest holder, could result in an income tax liability for that unit interest holder different from that which would result if the unit interest holder did not take the item into account separately. The IRS and Treasury request comments on whether this requirement is administratively feasible in the context of a widely held fixed investment trust or whether a different approach, also consistent with the taxation of grantor trusts, would be more appropriate.

#### *F. Coordination with Backup Withholding Rules*

Section 1.671-4(j)(7) of the proposed regulations contains provisions to coordinate these regulations with the backup withholding rules.

#### *Proposed Effective Date*

These regulations are proposed to apply to calendar years beginning on or after the date that final regulations are published in the **Federal Register**.

#### *Special Analyses*

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the regulations generally clarify existing reporting



obligations and are expected, for the most part, to have a minimal impact on industry practice. Thus, the regulations will not result in a significant economic impact on any entity subject to the regulations. Further, the reporting burdens in these regulations will fall primarily on large brokerage firms, large banks, and other large entities acting as trustees or middlemen, most of which are not small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. chapter 6). Thus, a substantial number of small entities will not be affected. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### *Comments and Public Hearing*

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely (in the manner described in the ADDRESSES caption) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Thursday, November 5, 1998 at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written comments by, November 12, 1998, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by October 15, 1998.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has

passed. Copies of the agenda will be available free of charge at the hearing.

#### *Drafting Information*

The principal author of these regulations is Faith Colson, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

\* \* \* \* \*

#### *Proposed Amendments to the Regulations*

Accordingly, 26 CFR parts 1 and 301 are proposed to be amended as follows:

#### **PART 1—INCOME TAXES**

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Section 1.671-4 also issued under 26 U.S.C. 671, 26 U.S.C. 6034A, and 26 U.S.C. 6049(d)(7).

Par. 2. Section 1.671-4 is amended by revising paragraph (a) and adding paragraph (j) to read as follows:

#### *§1.671-4 Method of reporting.*

(a) *Portion of trust treated as owned by the grantor or another person.* Except as otherwise provided in paragraphs (b) and (j) of this section, items of income, deduction, and credit attributable to any portion of a trust which, under the provisions of subpart E (section 671 and following), part I, subchapter J, chapter 1 of the Internal Revenue Code, is treated as owned by the grantor or another person are not reported by the trust on Form 1041, but are shown on a separate statement to be attached to that form. Paragraph (j) of this section provides special reporting rules for widely held fixed investment trusts. Section 301.7701-4(e)(2) of this chapter provides guidance on how the reporting rules in this paragraph (a) apply to an environmental remediation trust.

\* \* \* \* \*

(j) *Special rules applicable to widely held fixed investment trusts.* The reporting rules contained in this paragraph (j) apply to any widely held fixed investment trust.

(1) *Definitions.* For purposes of this paragraph (j):

*Affected expenses.* The term *affected expenses* has the meaning given that term by §1.67-2T(i)(1).

*Affected investor.* The term *affected investor* has the meaning given that term by §1.67-2T(h)(1).

*Exempt recipient.* An *exempt recipient* is any person described in paragraphs (j)(2)(iv)(A) through (R) of this section.

*Middleman.* A *middleman* is any person who holds an interest in an arrangement classified as a trust under §301.7701-4(c) of this chapter, and subject to subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code, on behalf of, or for the account of, another person, or who otherwise acts in a capacity as an intermediary for the account of another person, at any time during the calendar year. A middleman includes, but is not limited to—

(i) A custodian of a person's account, such as a bank, financial institution, or brokerage firm acting as custodian of an account;

(ii) A nominee, including the joint owner of an account or instrument except if the joint owners are husband and wife; and

(iii) A broker (as defined in section 6045(c)(1) and §1.6045-1(a)(1)) holding an interest for a customer in street name.

*Requesting person.* A *requesting person* is a person specified in paragraph (j)(3)(iii)(A) of this section who is entitled to request from the trustee the information specified in paragraph (j)(3)(ii) of this section.

*Trustee.* *Trustee* means the trustee of a widely held fixed investment trust.

*Unit interest holder.* A *unit interest holder* is any person who holds a direct or indirect interest, including a beneficial interest, in a widely held fixed investment trust at any time during the calendar year.

*Widely held fixed investment trust.* A *widely held fixed investment trust* is an arrangement classified as a trust under §301.7701-4(c) of this chapter, and subject to subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code, in which any interest is held by a middleman.

(2) *Form 1099 requirement for trustees and middlemen—*(i) *Obligation to file*

*Form 1099 with the Internal Revenue Service.* Except as provided in paragraph (j)(2)(iv) of this section—

(A) Every trustee must file with the Internal Revenue Service the appropriate Forms 1099 reporting the information specified in paragraph (j)(2)(ii) of this section with respect to any unit interest holder who holds an interest in the trust directly and not through a middleman; and

(B) Every middleman must file with the Internal Revenue Service the appropriate Forms 1099, reporting the information specified in paragraph (j)(2)(ii) of this section with respect to any unit interest holder on whose behalf or account the middleman holds an interest in the trust or acts in a capacity as an intermediary.

(ii) *Information to be reported.* The following information must be reported to the Internal Revenue Service on the appropriate Forms 1099—

(A) The name, address, and taxpayer identification number of the unit interest holder;

(B) The name, address, and taxpayer identification number of the person required to file the form;

(C) The amount of trust income (determined in accordance with paragraph (j)(6)(i) of this section) attributable to the unit interest holder for the calendar year for which the return is made;

(D) In the case of the sale or other disposition of a trust asset during the calendar year, the portion of the gross proceeds relating to the trust asset that is attributable to the unit interest holder; and

(E) Any other information required by the Forms 1099.

(iii) *Time and place for filing Forms 1099.* The Forms 1099 required to be filed with the Internal Revenue Service by trustees or middlemen pursuant to paragraph (j)(2)(i) of this section must be filed on or before February 28 of the year following the year for which the Forms 1099 are being filed. The returns must be filed with the appropriate Internal Revenue Service Center, at the address listed in the instructions for the Forms 1099. For extensions of time for filing returns under this section, see §1.6081-1. For magnetic media filing requirements, see §301.6011-2 of this chapter.

(iv) *Forms 1099 not required.* A Form 1099 is not required for a unit interest

holder that is an exempt recipient. However, if the trustee or middleman backup withholds under section 3406 on payments made to a unit interest holder (because, for example, the unit interest holder has failed to furnish a Form W-9 on request), then the trustee or middleman is required to make a return under this section, unless the trustee or middleman refunds the amount withheld in accordance with §31.6413(a)-3 of this chapter. An exempt recipient is generally exempt from information reporting without filing a certificate claiming exempt status unless the provisions of this paragraph (j)(2)(iv) require the unit interest holder to file a certificate. A trustee or middleman may in any case require a unit interest holder not otherwise required to file a certificate under this paragraph (j)(2)(iv) to file a certificate in order to qualify as an exempt recipient. See §31.3406(h)-3(a)(1)(iii) and (c)(2) of this chapter for the certificate that a unit interest holder must provide if a trustee or middleman requires the certificate in order to treat the unit interest holder as an exempt recipient under this paragraph (j)(2)(iv). A trustee or middleman may treat a unit interest holder as an exempt recipient based upon a properly completed form as described in §31.3406(h)-3(e)(2) of this chapter, its actual knowledge that the unit interest holder is a person described in this paragraph (j)(2)(iv), or the indicators described in this paragraph (j)(2)(iv). Any unit interest holder who ceases to be an exempt recipient shall, no later than 10 days after such cessation, notify the trustee or middleman in writing when it ceases to be an exempt recipient. For purposes of this paragraph (j)—

(A) *Corporation.* A corporation, as defined in section 7701(a)(3), whether domestic or foreign, is an exempt recipient. In addition, for purposes of this paragraph (j)(2)(iv), the term corporation includes a partnership all of whose members are corporations described in this paragraph (j)(2)(iv), but only if the partnership files with the trustee or middleman a properly completed form as described in §31.3406(h)-3(e)(2) of this chapter. Absent actual knowledge otherwise, a trustee or middleman may treat a unit interest holder as a corporation (and, therefore, as an exempt recipient) if one of the requirements of paragraph (j)(2)(iv)(A)(1), (2),

(3), or (4), is met at the time a unit interest holder acquires an interest in the trust.

(I) The name of the unit interest holder contains an unambiguous expression of corporate status (that is, Incorporated, Inc., Corporation, Corp., P.C., (but not Company or Co.)) or contains the term *insurance company*, *indemnity company*, *reinsurance company*, or *assurance company*, or its name indicates that it is an entity listed as a per se corporation under §301.7701-2(b)(8)(i) of this chapter.

(2) The trustee or middleman has on file a corporate resolution or similar document clearly indicating corporate status. For this purpose, a similar document includes a copy of Form 8832, filed by the unit interest holder to elect classification as an association under §301.7701-3(c) of this chapter.

(3) The trustee or middleman receives a Form W-9 which includes an EIN and a statement from the unit interest holder that it is a domestic corporation.

(4) The trustee or middleman receives a withholding certificate described in §1.1441-1(e)(2)(i), that includes a certification that the person whose name is on the certificate is a foreign corporation.

(B) *Tax exempt organization.* Any organization that is exempt from taxation under section 501(a) is an exempt recipient. A custodial account under section 403(b)(7) shall be considered an exempt recipient under this paragraph. A trustee or middleman may treat an organization as an exempt recipient under this paragraph (j)(2)(iv)(B) without requiring a certificate if the organization's name is listed in the compilation by the Commissioner of organizations for which a deduction for charitable contributions is allowed, if the name of the organization contains an unambiguous indication that it is a tax-exempt organization, or if the organization is known to the trustee or middleman to be a tax-exempt organization.

(C) *Individual retirement plan.* An individual retirement plan as defined in section 7701(a)(37) is an exempt recipient. A trustee or middleman may treat any such plan of which it is the trustee or custodian as an exempt recipient under this paragraph (j)(2)(iv)(C) without requiring a certificate.

(D) *United States.* The United States Government and any wholly-owned agency or instrumentality thereof are ex-

empt recipients. A trustee or middleman may treat a person as an exempt recipient under this paragraph (j)(2)(iv)(D) without requiring a certificate if the name of such person reasonably indicates it is described in this paragraph (j)(2)(iv)(D).

(E) *State*. A State, the District of Columbia, a possession of the United States, a political subdivision of any of the foregoing, a wholly-owned agency or instrumentality of any one or more of the foregoing, and a pool or partnership composed exclusively of any of the foregoing are exempt recipients. A trustee or middleman may treat a person as an exempt recipient under this paragraph (j)(2)(iv)(E) without requiring a certificate if the name of such person reasonably indicates it is described in this paragraph (j)(2)(iv)(E) or if such person is known generally in the community to be a State, the District of Columbia, a possession of the United States or a political subdivision or a wholly-owned agency or instrumentality or any one or more of the foregoing (for example, an account held in the name of "Town of S" or "County of T" may be treated as held by an exempt recipient under this paragraph (j)(2)(iv)(E)).

(F) *Foreign government*. A foreign government, a political subdivision of a foreign government, and any wholly-owned agency or instrumentality of either of the foregoing are exempt recipients. A trustee or middleman may treat a foreign government or a political subdivision thereof as an exempt recipient under this paragraph (j)(2)(iv)(F) without requiring a certificate provided that its name reasonably indicates that it is a foreign government or provided that it is known to the trustee or middleman to be a foreign government or a political subdivision thereof (for example, an account held in the name of the "Government of V" may be treated as held by a foreign government).

(G) *International organization*. An international organization and any wholly-owned agency or instrumentality thereof are exempt recipients. The term *international organization* shall have the meaning ascribed to it in section 7701(a)(18). A trustee or middleman may treat a unit interest holder as an international organization without requiring a certificate if the unit interest holder is designated as an international organization by executive

order (pursuant to 22 U.S.C. 288 through 288f).

(H) *Foreign central bank of issue*. A foreign central bank of issue is an exempt recipient. A foreign central bank of issue is a bank which is by law or government sanction the principal authority, other than the government itself, issuing instruments intended to circulate as currency. See §1.895-1(b)(1). A trustee or middleman may treat a person as a foreign central bank of issue (and, therefore, as an exempt recipient) without requiring a certificate provided that such person is known generally in the financial community as a foreign central bank of issue or if its name reasonably indicates that it is a foreign central bank of issue.

(I) *Securities and commodities dealer*. A dealer in securities, commodities, or notional principal contracts that is registered as such under the laws of the United States or a State or under the laws of a foreign country is an exempt recipient. A trustee or middleman may treat a dealer as an exempt recipient under this paragraph (j)(2)(iv)(I) without requiring a certificate if the person is known generally in the investment community to be a dealer meeting the requirements set forth in this paragraph (j)(2)(iv)(I) (for example, a registered broker-dealer or a person listed as a member firm in the most recent publication of members of the National Association of Securities Dealers, Inc.).

(J) *Real Estate Investment Trust*. A real estate investment trust, as defined in section 856 and §1.856-1, is an exempt recipient. A trustee or middleman may treat a person as a real estate investment trust (and, therefore, as an exempt recipient) without requiring a certificate if the person is known generally in the investment community as a real estate investment trust.

(K) *Entity registered under the Investment Company Act of 1940*. An entity registered at all times during the taxable year under the Investment Company Act of 1940, as amended (15 U.S.C. 80a-1), (or during such portion of the taxable year that it is in existence), is an exempt recipient. An entity that is created during the taxable year will be treated as meeting the registration requirement of the preceding sentence provided that such entity is so registered at all times during the taxable year for which such entity is in existence.

A trustee or middleman may treat such an entity as an exempt recipient under this paragraph (j)(2)(iv)(K) without requiring a certificate if the entity is known generally in the investment community to meet the requirements of the preceding sentence.

(L) *Common trust fund*. A common trust fund, as defined in section 584(a), is an exempt recipient. A trustee or middleman may treat the fund as an exempt recipient without requiring a certificate provided that its name reasonably indicates that it is a common trust fund or provided that it is known to the trustee or middleman to be a common trust fund.

(M) *Financial institution*. A financial institution such as a bank, mutual savings bank, savings and loan association, building and loan association, cooperative bank, homestead association, credit union, industrial loan association or bank, or other similar organization, whether organized in the United States or under the laws of a foreign country is an exempt recipient. A financial institution also includes a clearing organization defined in §1.163-5(c)(2)(i)(D)(8) and the Bank for International Settlements. A trustee or middleman may treat any person described in the preceding sentence as an exempt recipient without requiring a certificate if the person's name (including a foreign name, such as "Banco" or "Banque") reasonably indicates the unit interest holder is a financial institution described in the preceding sentence.

(N) *Trust*. A trust which is exempt from tax under section 664(c) (i.e., a charitable remainder annuity trust or a charitable remainder unitrust) or is described in section 4947(a)(1) (relating to certain charitable trusts) is an exempt recipient. A trustee or middleman which is a trustee of the trust may treat the trust as an exempt recipient without requiring a certificate.

(O) *Middlemen*. A middleman, as defined in paragraph (j)(1) of this section, is an exempt recipient.

(P) *Brokers*. A broker, as defined in section 6045(c) and §1.6045-1(a)(1), is an exempt recipient.

(Q) *Real estate mortgage investment conduit*. A real estate mortgage investment conduit, as defined in section 860D(a), is an exempt recipient.



(R) *A widely held fixed investment trust.* A widely held fixed investment trust, as defined in paragraph (j)(1) of this section, is an exempt recipient.

(3) *Trustee's requirement to furnish information to middlemen, exempt recipients, and noncalendar-year taxpayers—*

(i) *In general.* The trustee must cause to be printed in a publication generally read by and available to requesting persons, the name, address, and telephone number of a representative or official of the trust who will provide the information specified in paragraph (j)(3)(ii) of this section to such persons. The trustee must provide the information in the time and manner prescribed in paragraph (j)(3)(iii)(C) of this section to requesting persons who request the information in the manner prescribed in paragraph (j)(3)(iii)(B) of this section.

(ii) *Information required to be reported.* For each calendar quarter or calendar year specified, the trustee must have available and provide, upon request, the following information computed as of the last day of the quarter, or computed as of December 31 of the year specified—

(A) The name of the trust, the name and address of the trustee of the trust, and the employer identification number of the trust;

(B) The Committee on Uniform Security Identification Procedure (CUSIP) number, account number, serial number or other identifying number of the trust;

(C) All items of income (determined in accordance with paragraph (j)(6)(i) of this section), deduction, and credit of the trust, expressed both as a total dollar amount for the trust and as a dollar amount per unit outstanding on the last day of the period requested;

(D) If any trust asset has been sold or otherwise disposed of during the period requested, the gross proceeds received by the trust for the trust asset, the date of sale or disposition of the trust asset, and the percentage of that trust asset that has been sold or disposed of. The trust must also provide a schedule showing the portion (expressed in terms of a percentage) of the total fair market value of all the assets held by the trust that the asset sold or disposed of represented as of the last day of the quarter for each quarter that the asset was held by the trust;

(E) The amount of affected expenses of the trust expressed both as a total dollar amount and as a dollar amount per unit outstanding on the last day of the period requested;

(F) In the case of a widely held fixed investment trust that holds a pool of debt instruments subject to section 1272(a)-(6)(C)(iii), the information required by paragraph (j)(6)(ii) of this section;

(G) The number of units outstanding on the last business day of the period requested; and

(H) Any other information necessary for a unit interest holder that is the beneficial owner of a trust interest to properly report the income, deductions, and credits attributable to the portion of the trust treated as owned by the unit interest holder under section 671. For this purpose, the trustee shall separately state any trust item that, if taken into account separately by a unit interest holder, could result in an income tax liability for that unit interest holder different from that which would result if the unit interest holder did not take the item into account separately.

(iii) *Providing and requesting trust information—*(A) *Requesting persons.* The following persons that hold an interest in a trust may request the information specified in paragraph (j)(3)(ii) of this section from that trust—

(1) Any middleman;

(2) Any broker who holds a unit interest on its own behalf;

(3) Any other exempt recipient who holds an interest directly and not through a middleman;

(4) Any noncalendar-year unit interest holder who holds a trust interest directly and not through a middleman; and

(5) A representative or agent for a person specified in paragraphs (j)(3)(iii)(A)-(1) through (4) of this section.

(B) *Manner of requesting information from the trust.* A requesting person may request the information specified in paragraph (j)(3)(ii) of this section in writing or by telephone. The request must specify the calendar quarters or years for which the information is needed.

(C) *Time and manner of furnishing information—*(1) *Manner of furnishing information.* The information specified in paragraph (j)(3)(ii) of this section may be furnished as follows—

(i) By telephone;

(ii) By written statement sent by first class mail to the address provided by the requesting person;

(iii) By causing it to be printed in a publication generally read by and available to requesting persons and by notifying the requesting person in writing or by telephone of the publication in which it will appear, the date on which it will appear, and, if possible, the page on which it will appear; or

(iv) By any other method agreed to by the parties.

(2) *Time for furnishing the information.* The trustee must furnish, or cause to be furnished, the information specified in paragraph (j)(3)(ii) of this section on or before the later of—

(i) The 30th day after the close of the period for which the information was requested; or

(ii) The day that is 2 weeks after the receipt of the request.

(4) *Requirement of furnishing statement to unit interest holder—*(i) *In general.* Every trustee or middleman required to file appropriate Forms 1099 under paragraph (j)(2)(i) of this section with respect to a particular unit interest holder must furnish to that unit interest holder (the person whose identifying number is required to be shown on the form) a written statement showing the information required by paragraph (j)(4)(ii) of this section.

(ii) *Information required to be provided on written statement.* The written statement must specify for the calendar year for which the return is made the following information—

(A) The name of the trust and the CUSIP number, account number, serial number, or other identifying number for the trust or unit interest;

(B) The name, address, and taxpayer identification number of the person required to send the statement;

(C) All items of income (determined in accordance with paragraph (j)(6)(i) of this section), deduction, and credit of the trust attributable to the unit interest holder;

(D) If any trust asset is sold, or otherwise disposed of during the calendar year, the portion of the gross proceeds relating to the trust asset that is attributable to the unit interest holder, the date of sale or dis-

position of the trust asset, and the percentage of that trust asset that has been sold or otherwise disposed of. A schedule showing the portion (expressed in terms of a percentage) of the total fair market value of all the assets held by the trust that the asset sold or disposed of represented as of the last day of the quarter for each quarter that the asset was held by the trust must be included with the statement;

(E) In the case of a unit interest holder that is an affected investor, the affected expenses that are attributable to the unit interest holder;

(F) In the case of a widely held fixed investment trust that holds a pool of debt instruments subject to section 1272(a)(6)-(C)(iii), the information required by paragraph (j)(6)(ii) of this section;

(G) Any other information necessary for a unit interest holder to properly report the income, deductions, and credit attributable to the unit interest holder under section 671. For this purpose, the trustee or middleman, as the case may be, shall separately state any trust item that, if taken into account separately by any unit interest holder, could result in an income tax liability for that unit interest holder different from that which would result if the unit interest holder did not take the item into account separately; and

(H) A statement that the items of income, deduction, and credit and other information shown on the statement must be taken into account in computing the taxable income and credits of the unit interest holder on the income tax return of the unit interest holder.

(iii) *Due date and other requirements with respect to statement required to be furnished to the unit interest holder.* The statement required to be furnished to the unit interest holder under this paragraph (j)(4) for a calendar year must be furnished to the holder after April 30 of that year and on or before March 15 of the year following the year for which the statement is being furnished. The person sending the statement must maintain in its records a copy of the statement furnished to the unit interest holder for a period of 3 years from the due date for furnishing such statement specified in this paragraph (j)(4).

(5) *Requirement that middlemen furnish information to exempt recipients and noncalendar-year taxpayers.* For each

calendar quarter or calendar year specified, any exempt recipient listed in paragraph (j)(2)(iv) of this section and any noncalendar-year unit interest holder may request from the middleman who holds the unit interest on behalf of, or for the account of, the unit interest holder, the information listed in paragraph (j)(4)(ii)(A) through (G) of this section computed as of the last day of the calendar quarter specified, or computed as of December 31 of the year specified. The middleman must provide in writing or by telephone the information listed in paragraph (j)(4)(ii)(A) through (G) of this section to any such requester on or before the later of the 45th day after the close of the period for which the information was requested, or that day that is 4 weeks after the receipt of the request.

(6) *Special rules.* For purposes of this paragraph (j):

(i) *Determination of trust income.* Trust income is to be determined in the following manner—

(A) The trust is to be treated as a calendar year taxpayer using the cash receipts and disbursements method of accounting; and

(B) The amount of trust income for the calendar year is the gross amount of income generated by the trust assets (other than from the sale or other disposition of trust assets). Thus, in the case of a trust that receives a payment net of an expense, the payment must be grossed up to reflect the deducted expense.

(ii) *Widely held fixed investment trust holding pool of debt instruments subject to section 1272(a)(6)(C)(iii).* In the case of a widely held fixed investment trust that holds a pool of debt instruments subject to section 1272(a)(6)(C)(iii), requesting persons, unit interest holders, exempt recipients, and noncalendar-year taxpayers must be provided, as required under paragraphs (j)(3)(ii)(F), (j)(4)(ii)(F), and (j)(5), respectively, of this section, information necessary to compute—

(A) The accrual of market discount, including the type of information required under paragraphs §1.6049-7(f)(2)(i)(G) in the case of a REMIC regular interest or a collateralized debt obligation not issued with original issue discount; and

(B) The accrual of original issue discount and market discount, including the type of information required under

§1.6049-7(f)(2)(ii)(E), (F), (I), and (K) in the case of a REMIC regular interest or a collateralized debt obligation that is issued with original issue discount.

(7) *Backup withholding requirements.* Every trustee and middleman filing a Form 1099 under this section shall be considered a payor within the meaning of §31.3406(a)-2 of this chapter. The obligation of a trustee or middleman as payor to backup withhold shall be determined pursuant to section 3406 and the regulations promulgated thereunder.

(8) *Penalties for failure to comply.* Every trustee and middleman who has a reporting obligation under this paragraph (j) and who fails to comply is subject to the penalties provided by sections 6721, 6722, and any other applicable penalty provisions.

(9) *Effective date.* Trustees and middlemen must report in accordance with this paragraph (j) for calendar years beginning on or after the date that the final regulations are published in the **Federal Register**.

Par. 3. Section 1.6049-7 is amended by adding a sentence to the end of paragraph (f)(4) to read as follows:

*§1.6049-7 Returns of information with respect to REMIC regular interests and collateralized debt obligations.*

\* \* \* \* \*

(f) \* \* \*

(4) \* \* \* For rules regarding a widely held fixed investment trust that holds a pool of debt instruments subject to section 1272(a)(6)(C)(iii), see §1.671-4(j).

\* \* \* \* \*

## PART 301—PROCEDURE AND ADMINISTRATION

Par. 4. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 5. Section 301.6109-1 is amended by revising the last sentence of paragraph (a)(2)(i) to read as follows:

*§301.6109-1 Identifying numbers.*

(a) \* \* \*

(2) \* \* \* (i) \* \* \* If the trustee has not already obtained a taxpayer identification number for the trust, the trustee must obtain a taxpayer identification number for

the trust as provided in paragraph (d)(2) of this section in order to report pursuant to §1.671-4(a), (b)(2)(i)(B), (b)(3)(i), or (j) of this chapter.

Michael P. Dolan,  
*Deputy Commissioner of  
Internal Revenue.*

(Filed by the Office of the Federal Register on August 12, 1998, 8:45 a.m., and published in the issue of the Federal Register for August 13, 1998, 63 F.R. 43354.)

## S Corporation Subsidiaries; Hearing

### Announcement 98-82

AGENCY: Internal Revenue Service,  
Treasury.

ACTION: Notice of public hearing on  
proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the treatment of corporate subsidiaries of S corporations. In addition, this document announces that persons wishing to testify who are outside the Washington, DC area, will be able to make their presentations from one of two Internal Revenue Service remote teleconference sites.

DATES: The public hearing will be held September 9, 1998, beginning at 1:00 p.m. (EDT). Requests to speak and outlines of oral comments must be received by Wednesday, August 20, 1998.

ADDRESSES: The public hearing will be held in room 3411, Internal Revenue

Building, 1111 Constitution Avenue, NW, Washington, DC. The addresses of the remote teleconference sites are listed below under Supplementary Information.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1308 of the Internal Revenue Code. These proposed regulations (REG-251698-96) appeared in the **Federal Register** (63 F.R. 19864 [1998-20 I.R.B. 14]) on Wednesday, April 22, 1998.

The hearing will be held in room 3411 of the Internal Revenue Building, 1111 Constitution Avenue, NW, Washington, DC, and in two teleconference sites listed below:

Federal Building, 5th Floor  
Room 5003  
300 N. Los Angeles Street  
Los Angeles, California

Robert A. Young Building  
2nd Floor, Conference Room  
1222 Spruce Street  
St. Louis, MO 63103

The rules of §601.601 (a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rule-making and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, August 20, 1998, an out-

line of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the question from the panel for the government and answers to these questions.

Because of controlled access restriction, attendees cannot be admitted beyond the lobby of the Internal Revenue building until 12:30 p.m. Hearing times at the remote teleconference sites will be concurrent with the hearing in Washington, DC. (i.e., 10 a.m. PDT and 12 noon CDT)

Due to limited seating capacity at the remote teleconference sites, no more than 12 people may be accommodated at any one time in each teleconference room. Seating in the teleconference rooms will be made available based on the order of presentations. IRS personnel will be available at the remote teleconference sites to assist speakers in using the teleconference equipment.

The Service will prepare an agenda showing the scheduling of speakers and will make copies of the agenda available free of charge at the hearing. Testimony will begin with the speakers at the remote teleconference sites in the following order: Los Angeles, St. Louis, and will conclude with presentations by the speakers in Washington, DC.

Cynthia E. Grigsby,  
*Chief, Regulations Unit,  
Assistant Chief Counsel (Corporate).*

(Filed by the Office of the Federal Register on August 12, 1998, 8:45 a.m., and published in the issue of the Federal Register for August 13, 1998, 63 F.R. 43353.)

## Definition of Terms

*Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:*

*Amplified* describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

*Clarified* is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

*Distinguished* describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

*Modified* is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it ap-

plies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

*Obsoleted* describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

*Revoked* describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

*Superseded* describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the

new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

*Supplemented* is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

*Suspended* is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

## Abbreviations

*The following abbreviations in current use and formerly used will appear in material published in the Bulletin.*

A—Individual.  
Acq.—Acquiescence.  
B—Individual.  
BE—Beneficiary.  
BK—Bank.  
B.T.A.—Board of Tax Appeals.  
C.—Individual.  
C.B.—Cumulative Bulletin.  
CFR—Code of Federal Regulations.  
CI—City.  
COOP—Cooperative.  
Ct.D.—Court Decision.  
CY—County.  
D—Decedent.  
DC—Dummy Corporation.  
DE—Donee.  
Del. Order—Delegation Order.  
DISC—Domestic International Sales Corporation.  
DR—Donor.  
E—Estate.  
EE—Employee.

E.O.—Executive Order.  
ER—Employer.  
ERISA—Employee Retirement Income Security Act.  
EX—Executor.  
F—Fiduciary.  
FC—Foreign Country.  
FICA—Federal Insurance Contribution Act.  
FISC—Foreign International Sales Company.  
FPH—Foreign Personal Holding Company.  
F.R.—Federal Register.  
FUTA—Federal Unemployment Tax Act.  
FX—Foreign Corporation.  
G.C.M.—Chief Counsel's Memorandum.  
GE—Grantee.  
GP—General Partner.  
GR—Grantor.  
IC—Insurance Company.  
I.R.B.—Internal Revenue Bulletin.  
LE—Lessee.  
LP—Limited Partner.  
LR—Lessor.  
M—Minor.  
Nonacq.—Nonacquiescence.  
O—Organization.  
P—Parent Corporation.

PHC—Personal Holding Company.  
PO—Possession of the U.S.  
PR—Partner.  
PRS—Partnership.  
PTE—Prohibited Transaction Exemption.  
Pub. L.—Public Law.  
REIT—Real Estate Investment Trust.  
Rev. Proc.—Revenue Procedure.  
Rev. Rul.—Revenue Ruling.  
S—Subsidiary.  
S.P.R.—Statements of Procedural Rules.  
Stat.—Statutes at Large.  
T—Target Corporation.  
T.C.—Tax Court.  
T.D.—Treasury Decision.  
TFE—Transferee.  
TFR—Transferor.  
T.I.R.—Technical Information Release.  
TP—Taxpayer.  
TR—Trust.  
TT—Trustee.  
U.S.C.—United States Code.  
X—Corporation.  
Y—Corporation.  
Z—Corporation.



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<sup>1</sup> A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 1998–1 through 1998–28 will be found in Internal Revenue Bulletin 1998–29, dated July 20, 1998.

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<sup>1</sup> A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1998–1 through 1998–28 will be found in Internal Revenue Bulletin 1998–29, dated July 20, 1998.



## Notes

## Notes

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